

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEVONAIRE A. JONES,	§
	§ No. 93, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID Nos. 0711010438
	§ 0808020280
Plaintiff Below-	§
Appellee.	§

Submitted: June 24, 2009

Decided: July 20, 2009

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 20th day of July 2009, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) On September 17, 2008, the defendant-appellant, Devonaire A. Jones, pleaded guilty to Rape in the Second Degree, Robbery in the First Degree, Burglary in the First Degree, Assault in the First Degree, Attempted Rape in the First Degree, Robbery in the Second Degree, and Possession of a Deadly Weapon During the Commission of a Felony. On December 1, 2008, Jones filed a motion to withdraw his guilty plea, which was denied by the Superior Court. Jones subsequently was sentenced to a total of 135 years

at Level V, to be suspended after 65 years for decreasing levels of supervision. This is Jones' direct appeal.

(2) Jones' counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that arguably could support the appeal; and (b) the Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.¹

(3) Jones' counsel asserts that, based upon a careful and complete examination of the record and the law, there are no arguably appealable issues. By letter, Jones' counsel informed Jones of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Jones also was informed of his right to supplement his attorney's presentation. Jones responded with a brief that raises three issues for this Court's consideration. The State has responded to the position taken by Jones' counsel as well as

¹ *Person v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

the issues raised by Jones and has moved to affirm the Superior Court's judgment.

(4) Jones raises three issues for this Court's consideration. He claims that a) the Superior Court judge did not listen to his arguments at the evidentiary hearing with an open mind; b) the prosecutor's questions to him regarding the charges were irrelevant and improper; and c) his counsel gave him erroneous advice regarding what his sentence would be.

(5) The record reflects that, in November 2007, Jones was charged with a number of criminal offenses in connection with three separate incidents in Sussex County, Delaware, each of which involved the robbery and armed assault of a female victim. In September 2008, Jones pleaded guilty to multiple criminal charges in connection with those three incidents. With respect to the first victim, Jones pleaded guilty to Rape in the Second Degree, Robbery in the First Degree, and Burglary in the First Degree. With respect to the second victim, Jones pleaded guilty to Assault in the First Degree, Attempted Rape in the First Degree, and Possession of a Deadly Weapon During the Commission of a Felony. With respect to the third victim, Jones pleaded guilty to Robbery in the Second Degree.

(6) In December 2008, Jones moved to withdraw his plea on the ground that his appointed counsel had provided ineffective assistance in

connection with the plea proceedings. He also moved to disqualify his counsel. New counsel was appointed for Jones and an evidentiary hearing was scheduled on the motion. After considering the evidence, the Superior Court denied Jones' motion to withdraw his plea and, thereafter, imposed sentence.

(7) This Court reviews the Superior Court's denial of a motion to withdraw a guilty plea for abuse of discretion.² If, as here, a motion to withdraw a guilty plea is made before sentence is imposed, the Superior Court has discretion to grant the motion "upon a showing by the defendant of any fair and just reason."³ In evaluating whether to grant the motion, the Superior Court must address the following five questions: a) whether there was a procedural defect in taking the plea; b) whether the defendant voluntarily entered the plea; c) whether the defendant had a basis to assert legal innocence; d) whether the defendant had adequate legal counsel; and e) whether granting the motion would prejudice the State or unduly inconvenience the court.⁴

(8) We have carefully reviewed the transcripts of the plea colloquy and the evidentiary hearing on the motion to withdraw the guilty plea. The

² *Chavous v. State*, 953 A.2d 282, 285 (Del. 2008).

³ Super. Ct. Crim. R. 32(d).

⁴ *Scarborough v. State*, 938 A.2d 644, 649 (Del. 2007).

transcripts reflect that the Superior Court properly considered all five factors in denying Jones' motion to withdraw his guilty plea. Specifically, the Superior Court found that a) there was no procedural defect in taking the plea; b) the guilty plea was entered knowingly, intelligently and voluntarily; c) there was no basis for an assertion of actual innocence by the defendant; d) there was no evidence of ineffective assistance on the part of defendant's counsel; and e) granting the motion to withdraw the plea would result in prejudice to the State and inconvenience to the court. Moreover, contrary to Jones' claims, there is no evidence that the Superior Court judge failed to listen to Jones' arguments with an open mind and no evidence of impropriety on the part of the prosecutor in his questioning of Jones. Finally, the Superior Court's determination that Jones was "fully aware" that he could receive a life sentence is amply supported by the transcript of the plea colloquy.

(9) This Court has reviewed the record carefully and has concluded that Jones' appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Jones' counsel has made a conscientious effort to examine the record and has properly determined that Jones could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice